IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

MFA.No. 33 of 2002

MVOP.1012/1995 of MACT, IRINJALAKUDA
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APPELLANT: PETITIONER
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1. LISSY, AGED 30, W/O. LATE JOSE,
MOOKANAMPARAMBIL HOUSE, P.O.PERAMBRA,
THRISSUR DISTRICT.

2. MINOR JOHN @ JOSLIN, AGED 5 YEARS,
REPRESENTED BY THE MOTHER AND GUARDIAN LISSY.

3. M.V.LONA, AGED 69 YEARS, S/O. VAREED,
MOOKANAMPARAMBILHOUSE, P.O.PERAMBRA (DEAD, THE ONLY LEGAL HEIR WAS HIS SON WHO DIED IN THE MOTOR VEHICLE ACCIDENT)

BY ADV. SRI.T.N.MANOJ
SRI.DINESH R.SHENOY
SRI.JOJO GEORGE

RESPONDENTS: RESPONDENTS
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1. C.L.SHABU, CHETTAKKAL HOUSE,
P.O.NANDIKARA, THRISSUR DISTRICT.

2. SEO PAUL, S/O.PAUL, THEKKEKKARA HOUSE,
P.O.PERAMBRA, THRISSUR DISTRICT.

3. THE ORIENTAL INSURANCE CO.LTD.,
ROUND WEST, THRISSUR DISTRICT.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 5.9.2007, THE COURT ON 05/09/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.33 OF 20O2

Dated this the 5th day of September, 2007

JUDGMENT

Koshy, J.

A 32 year old youngster suffered a serious personal injury in a motor accident on 3.12.1994 due to the negligence of the driver of the vehicle insured by the third respondent Insurance Company. He died on 7.12.1994 in the hospital. The Tribunal found that the accident occurred due to the negligence of the second respondent. The insurance was admitted. However, though the petitioners claimed compensation of Rs.4,75,000/-, the total compensation awarded by the Tribunal was only Rs.2,22,000/-. The deceased left his wife aged 25 years and a minor child aged 2 months. He was also maintaining his aged father. It was the case of the petitioners that at the time of accident, the deceased was aged 32 and working as a driver in M/s.H.M.A. Consultant Private Limited, New Delhi getting a salary of Rs.3,500/-. The widow, while examined as PW1, deposed that there was promotional prospects also. His salary certificate was produced, but it was marked subject to proof. Since the employer of the deceased was not examined to prove the salary certificate, that

was not taken into account by the Tribunal. But it was not seriously disputed regarding his employment in a private firm in New Delhi. The fact that he was a professional driver employed in Delhi is not disputed. So, we are of the opinion that atleast Rs.3,000/- ought to have been fixed as the monthly income of the deceased. If that be so, after deducting one-third for the personal expenditure, Rs.2,000/- can be taken as the loss of dependency. The Tribunal has taken 17 as the multiplier under the second schedule of the Motor Vehicles Act as the deceased was aged 32 and awarded loss of dependency at Rs.2,04,000/-. It is contended that the multiplier also should be enhanced considering the lifespan of the deceased. Since the Tribunal fixed multiplier taking guidance from second schedule we are not enhancing the same. Since he has taken Rs.2,000/- as the monthly loss of dependency, compensation for loss of dependency would be 2000 x 12 x 17 = 4,08,000. Hence, claimants are entitled to Rs.2,04,000/- in addition to the compensation already ordered by the tribunal, Rs.2,04,000/- should be deposited by the third respondent Insurance Company with 7% interest from the date of application to the date of deposit. On deposit of the amount, the first appellant is allowed to withdraw 40% of the amount. 10% of the amount should be allowed to withdraw by the third appellant.

Balance amount and the interest should be deposited by the Insurance Company in a nationalised bank and the second appellant is allowed to withdraw the same at the age of 21.

The appeal is allowed partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.33 OF 2001

JUDGMENT

5.9.2007